

"among these books, naturally, none is to be expected, [sic] adapted to religious instruction." The Supreme Court concluded that "the legislation does not segregate private schools, or their pupils, as its beneficiaries, or attempt to interfere with any matters of exclusively private concern. Its interest is education, broadly; its method, comprehensive. Individual interests are added only as the common interest is safeguarded."

These cases offer the guidelines for a proper approach to the constitutional problems involved in a comprehensive aid to education legislation. They refute any notion that all forms of non-discriminatory Federal assistance applicable to public and nonpublic schools are unconstitutional. On the contrary, they strongly suggest that a deliberate policy of excluding from the benefits of general welfare legislation, schools with religious affiliations may raise substantial constitutional questions. The Supreme Court has given clear recognition to the historic fact that we have a dual system of education in this country at the elementary as well as the college level. It has been at pains to point out that this dual system is constitutionally protected against governmental action which would destroy church-supported elementary schools.

In our efforts to adhere to the limitations of the 1st amendment, let us not forget the limitations of due process in the 5th and 14th amendments, and the provisions vouchsafing the free exercise of our religious beliefs. Fairness and balance in our approach to the subject of Federal aid-to-education may be a legal as well as a moral obligation.

Neither the Constitution nor the cases construing it tell us what kind of aid-to-education bill to enact. We must devise a program which will meet the practical as well as the legal problems involved.

Personally, I have always believed that a great deal could be accomplished by giving tax relief to individuals for their educational expenses. Under the provisions of a bill I have introduced for this purpose (S. 792), individuals filing Federal income-tax returns would be permitted to deduct from their gross income, fees and tuition up to \$300 paid to educational institutions for themselves and their children or dependents. Included would be outlays to any recognized educational institution, including colleges, universities, graduate schools, private school, parochial schools, technical training schools, and service schools. Such a program could serve as a supplement to direct Federal assistance to public schools, and the two programs together would be well designed to foster our dual systems of education.

The Internal Revenue Service has informed me that the annual revenue that would be lost by permitting such a tax deduction would be about \$300 million. This is a substantial sum but it is less than is proposed in many of the other aid-to-education proposals. The tax deduction approach has the great merit of not interfering with the free choice of schools by the families and children involved.

Investment in education is one activity to which the Federal Government should give every encouragement. Businesses are now permitted to deduct promotional expenses on the ground that these expenses generate further business and in the long run additional revenues. The same is certainly true of investment in education. The difference in income levels among those with high school, college and graduate degrees is a well-known fact. And in a larger sense, the whole country is enriched by a better educated populace.

One final word and I shall conclude. Recently a separate bill was introduced to authorize loans to private nonprofit schools for the construction of elementary and secondary school facilities. It was suggested at that time that this measure should be acted upon separately from bills for public school aid in order to avoid any church-state controversy in our consideration of Federal aid-to-education legislation.

Personally, I do not believe that separation of these two school aid bills avoids the constitutional questions which have been raised. What separation really does is initially to determine the constitutional issue adversely to the position of the church-supported schools, for it implies a rejection of the principle that both systems of education should be treated in a nondiscriminatory manner by the Federal Government. If Congress goes too far in this direction, it may impair the freedom of choice principle declared by the Supreme Court in the Pierce case. There is no doubt that the Supreme Court said in that case that governmental action which forced all children to accept instruction from public schoolteachers only, would be unconstitutional.

Moreover, provision for Federal aid only to church-supported schools places such aid in its most difficult constitutional posture. It has never been contended that the Federal Government could aid church schools as a separate proposition. Rather, the argument for such aid has been that it is justified to avoid discrimination against the non-public school system. This rationale is substantially blurred by the separation of the two systems of education in our legislative deliberations.

Accordingly, I believe that such separation would raise unintended additional hazards to the fair treatment of both types of education by the Federal Government. A separate bill for church-supported schools, actually would serve to buttress the arguments against support of such schools by favoring them solely as religious institutions, rather than as coordinate members of the educational community. This would raise regrettable, practical consequences, and it would be inconsistent with the sanction the Supreme Court has given to reasonably nondiscriminatory treatment of all educational institutions.

In conclusion, I wish to emphasize again that what I have discussed in this statement are the constitutional criteria pertinent to the aid-to-education issue. I have not attempted to analyze the

policy considerations which should shape any specific legislative proposals. My only purpose has been to offer, as a lawyer, some understanding of the highly important legal problems which this subject poses. I submit these observations in all modesty, but I hope I have succeeded in clarifying, in some measure, these difficult questions.

Mr. DODD. Mr. President, will the Senator from New York yield?

Mr. KEATING. I am happy to yield.

Mr. DODD. In my opinion, the Senator from New York has made a most scholarly, highly intelligent, and highly informational speech on a very critical subject. I know the Senator from New York has introduced a bill, as have I and other Senators, the purpose of which is to afford relief to parents in the form of a tax deduction. It seems to me that this is one way in which assistance might be given to parents who wish to send their children to private schools. Has the Senator considered this proposal?

Mr. KEATING. Yes; and I have never heard anyone raise an issue regarding the constitutionality of that approach to the subject. I myself like that approach. I am glad to know of the support for that proposal from the distinguished Senator from Connecticut, and I am happy to hear that he apparently shares my view that it is the most constructive way to approach this problem, which is a difficult one, and raises emotional issues.

Mr. DODD. Yes, indeed.

Mr. KEATING. I am sure there is no possible question about the constitutionality of that approach.

Mr. DODD. I quite agree; and I believe that the Senator from New York has made a real contribution by introducing the bill. I assure him that I support him in its introduction.

Mr. KEATING. I am very grateful to the Senator from Connecticut.

#### LESSONS TO BE LEARNED FROM THE CUBAN SETBACK

Mr. DODD. Mr. President, I believe that President Kennedy's speech before the National Press Club, last Thursday, marked a turning point in our history and a turning point in the course of world affairs. It signifies that the humiliating period of retreats and defeats is now at an end. We accept the fact that we are locked in mortal combat with an implacable adversary. We are prepared to stand and fight wherever it may be necessary. We are prepared to fight together with our allies; but, if necessary, we will go it alone.

Ever since the close of World War II, under both Democratic and Republican administrations, we have been beguiled and bedeviled and pushed around and defeated by the forces of international communism. We had overwhelming military and political power in our hands, but we had neither the understanding nor the will to use it. Our good faith was absolute; our innocence was boundless; our blunders were seemingly endless.